NO. 93-725

FILED
NOV 22 1993
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1993

MORVANT J. CHERAMIE ET AL,
Petitioners

versus

EXXON CORPORATION, SHELL OIL COMPANY AND MOBIL EXPLORATION & PRODUCING, NORTH AMERICA INC.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT MOBIL EXPLORATION & PRODUCING NORTH AMERICA INC.

PATRICK W. GRAY,
Counsel of Record
THOMAS M. MCNAMARA
Liskow & Lewis
822 Harding Street
Post Office Box 52008
Lafayette, Louisiana 70505
(318) 232-7424

Attorneys for Mobil Exploration & Producing North America Inc.

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

QUESTION PRESENTED

Whether this Court should grant certiorari to review lower court rulings that were based on state substantive law as applied to the individual facts of the present case in view of the fact that the case presents absolutely no special or important issues and presents none of the enumerated criteria set forth in Supreme Court Rule 10.1.

BRIEF IN OPPOSITION OF RESPONDENT, MOBIL EXPLORATION & PRODUCING NORTH AMERICA INC.

MAY IT PLEASE THE COURT:

Respondent, Mobil Exploration & Producing North America Inc. ("MEPNA")[1] respectfully urges the Court to deny the Petition for Writ of Certiorari filed by Petitioners and argues as folows:

ARGUMENT

I. THE PETITION SHOULD BE DENIED PURSUANT TO RULE 10.1 OF THE SUPREME COURT

None of the factors enumerated by Rule 10.1 are presented by this case, and no other special and important reasons exist for the granting of a writ of certiorari. The requirement of "special and important reasons" in Rule 10.1 reflects the policy of this Court to focus on problems beyond the academic or episodic. To the contrary, the case below presented only ordinary issues of state substantive law and federal procedural law and the application of that law to the unique and undisputed facts presented. In addition, the following discussion of the merits of the Petitioners' claims reveals that the decisions of the courts below achieved a proper and just result and were correct as a matter of law.

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[1] Mobil Corporation is the parent corporation of MEPNA. Chorley Company Limited is the only subsidiary of MEPNA that is not wholly owned. MEPNA owns less than fifty percent interest in Mobil Investments Canada, Inc., so that company is not listed as a subsidiary.

II. THE GRANTING AND AFFIRMATION OF SUMMARY JUDGMENT IN THE COURTS BELOW WAS CORRECT

A brief restatement of the undisputed facts reveals that the claims of the plaintiffs are fallacious, logically inconsistent, and self defeating.

Long ago Plaintiffs ancestors, Laurence and Celeste Charamie, owned an interest in the property that is the subject of this litigation.[2] In 1934 Harvey Peltier ("Peltier") filed a lawsuit (the "Partition Suit") claiming that he owned a substantial interest in the subject property, and sought partition of the property by licitation.[3] Frederick C. Scully ("Scully") and various heirs of Laurence and Celeste Cheramie, including all legal predecessors of the Plaintiffs in the present suit, were named as defendants in the Partition Suit.

In accordance with the procedure for partition by licitation, a Sheriff's Sale of the subject property was held on December 29, 1934. At the sale, Peltier and Scully purchased the property. A deed reflecting the sale was recorded in the public records for Lafourche Parish in 1935. Peltier and Scully later entered into an agreement by which the property was divided into two separate tracts, one

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[2] Lawrence Cheramie died in 1894, and Celeste died in 1906. Plaintiffs are descendents of Haize Cheramie, a grandchild of Laurence and Celeste, who himself died in 1926.

[3] In partition by licitation, jointly owned property is sold at a Sheriff's Sale, with proceeds of the sale paid to the owners based on their proportionate ownership in the property.

owned entirely by Peltier, the other owned entirely by Scully. The property retained by Peltier has come to be known in these proceedings (and in the critical title documents) as "Tract A," and the property retained by Scully has come to be known as "Tract B." Peltier later transferred an interest in his tract (Tract A) to the heirs of John Pitre. It is undisputed that from 1935 forward the foregoing events and transactions, including the Sheriff's Sale to Peltier and Scully that divested the Cheramies of any ownership of the subject property, were reflected in the public records of Lafourche Parish.

In 1951, certain of the heirs of Laurence and Celeste Cheramie filed an action (the "Compromised Suit") to have the Sheriff's Sale conducted in the Partition Suit—the sale which divested them of any interest in the property—declared null as to them. The predecessors of the current Plaintiffs were joined in the Compromised Suit as involuntary plaintiffs.

In 1957, all of the predecessors of the current Plaintiffs entered into a Compromise Agreement that granted them certain defined royalty interests in Tract A and Tract B. Other parties who did not settle their claims proceeded through the course of litigation. The Louisiana courts ultimately decreed that the Sheriff's Sale under which Peltier, Pitre and Scully held title was valid and, on the basis of prescription (statute of limitations) could not be attacked. *Pitre v. Peltier,* 122 So.2d 867 (La. App. 1 Cir. 1960).

Since 1957, MEPNA and its predecessors have paid mineral royalties to the Plaintiffs or their predecessors

exactly in accordance with the interests set forth in the Compromise Agreement, and Plaintiffs do not dispute that such payments were correct *if* the Compromise Agreement is valid. Plaintiffs instead base their claims on the contention that the Compromise Agreement is invalid.

The Plaintiffs' arguments attacking the Compromise Agreement are meritless and self-contradictory. Any rights the present Plaintiffs have with respect to the subject property could be derived only from the Compromise Agreement that their predecessors executed in 1957. As of 1934, the Sheriff's Sale that resulted from the Partition Suit completely divested the Cheramies of any ownership in Tract A and Tract B. There is no judgment or other order or document that nullifies that properly confected and duly recorded Sheriff's Sale covering the property. Therefore Plaintiffs own that which they acquire by virtue of the 1957 Compromise Agreement, or they own nothing at all.

The fatal flaw in the plaintiffs argument is that their entire case rests upon a legal attack upon the validity of the Compromise Agreement, but by doing so, they disavow the only instrument by which they hold any rights at all. Both the Trial and the court of Appeals correctly recognized if the Compromise Agreement were held invalid, the plaintiffs would have no title and therefore no right whatsoever to royalties from MEPNA.

CONCLUSION

In response to MEPNA's Motion for Summary Judgment, Plaintiffs came forward with no evidence to show how they have any interest in the subject property if

the Compromise Agreement is annulled, and they produced no evidence to contradict MEPNA's showing that royalties were always properly paid based on the interests Plaintiffs received under the Compromise Agreement.

It is clear on the merits that the courts below were correct in granting and affirming summary judgment in favor of MEPNA. Plaintiffs did not show how they possess any rights against MEPNA except those created under the 1957 Compromise Agreement, and did not show any defects in MEPNA's actions taken pursuant to that agreement. Plaintiffs are entitled to no relief, and the rulings below should be affirmed.

Respectfully submitted,

LISKOW & LEWIS

PATRICK W. GRAY (#6265)
THOMAS M. MCNAMARA (#10610)
P. O. Box 52008
822 Harding Street
Lafayette, Louisiana 70505
(318) 232-7424

Attorneys for Mobil Exploration &
Producing North America Inc.